
2000 Wis Eth Bd 04
LOCAL CODE -- DISQUALIFICATION

The Ethics Board advises that in the case of a local official who has been elected to serve on the board of directors of a municipal mutual insurance corporation by a government approved process, to represent the local government's interests on the board, §19.59, *Wisconsin Statutes*, does not bar the official from participating in the local government's consideration, discussion, or votes to award a contract to or change government policy to permit the purchase of services from the corporation.

Facts

¶1 This opinion is based upon these understandings:

- a. You write on behalf of a mutual insurance corporation ("the Corporation").
- b. The Corporation was established as a municipal mutual insurance under §611.11(4), *Wisconsin Statutes*, which authorizes "municipalities or associations of municipalities" to organize such companies.
- c. The Corporation is a not-for-profit entity that is owned by its local government policyholders.
- d. The Corporation provides worker's compensation insurance, liability insurance, and risk management services to its policyholders.
- e. The Corporation has a board of directors, consisting of local government representatives.
- f. A government representative must either be a member of the local government's legislative body or the local government's chief executive.
- g. Government representatives are elected by the legislative bodies' representatives in each of several districts.
- h. The Corporation's board members receive a per diem of \$75 per meeting plus mileage and expenses, not to exceed \$35 per day.
- i. The Corporation conducts its meetings pursuant to Wisconsin's open meetings law and its records are subject to disclosure under the open records law.

- j. All of the Corporation's earnings accrue to policyholders and a withdrawing policyholder is entitled to a proportionate share of refunds, if any, and the return of its capital contribution.
- k. The Internal Revenue Service has ruled that the Corporation's income from providing insurance to governmental units is not taxable because the Corporation is performing a government function, within the scope of §115 of the Internal Revenue Code.

Question

¶2 The Ethics Board understands your question to be:

Consistent with §19.59, *Wisconsin Statutes*, may a local government official who is a director of the Corporation participate in the local government's consideration, discussion, or votes to award a contract to the Corporation or change county policy to permit the purchase of services from the Corporation?

Discussion

¶3 Wisconsin's Code of Ethics for Local Government Officials applies to your question. Section 19.59(1)(a) and (c)2., *Wisconsin Statutes*, provides:

No local public official
May use his or her office or position
To obtain anything of substantial value or a substantial benefit
For the private benefit of an organization with which the official is associated.¹

¹ Section 19.59(1)(a) and (c)2., *Wisconsin Statutes*, provides:

19.59 Codes of ethics for local government officials, employees and candidates. (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

(c) Except as otherwise provided in par. (d), no local public official may:
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

¶4 Section 19.59(1)(c)1., *Wisconsin Statutes*, provides:

No local public official
May take any official action
Substantially affecting a matter
In which an organization with which the official is associated
Has a substantial financial interest.²

¶5 An elected member of a local government's legislative body is a local public official.³ Participating in consideration, discussion, or votes to award a contract to the Corporation or change county policy to permit the purchase of services from the Corporation is a use of office and entails taking official action. The deciding issue is whether the mutual insurance company is an organization with which the official is "associated" within the statutory meaning.⁴

¶6 Section 19.42(2), *Wisconsin Statutes*, provides:

"Associated", when used with reference to an organization, includes any organization in which an individual . . . is a director, officer or trustee . . . or of which an individual . . . is an authorized representative or agent.

¶7 In 1996 Wis Eth Bd 9, the Ethics Board addressed a similar situation. In that circumstance the issue was whether a local official was a director of a private organization to which the local government had appointed him, or whether the local unit of government, acting through its agent, was the director. In that opinion we said:

A local official, appointed pursuant to state statute, or local ordinance or resolution, to represent the local unit of government and its interests on a board of directors of an organization, does not thereby become associated with that organization. A local elected official appointed in this circumstance serves in a representational, and not an individual, capacity. It appears to be

² Section 19.59(1)(c)1., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:
1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

³ Section 19.42(7u), (7w), (7x), *Wisconsin Statutes*.

⁴ Because of our disposition of this issue, we need not consider whether the mutual insurance Corporation is an "organization," which hinges on whether it is a body politic, or whether awarding a contract to the insurance company or changing government policy to permit the local government to purchase services from the company is a substantial private benefit or of substantial financial interest to the company.

the local unit of government has a seat on the board of directors by virtue of the governing law; not the individual filling that seat. Indeed, it is our understanding that a local governmental unit would appoint an individual to an organization's board of directors to protect its interests, and not simply to serve the organization.

¶8 In the instance about which you have asked the local governmental unit is represented on the Corporation's board of directors through its participation in the election of an official as a corporate director. The local government has, by virtue of its decision to become a member of the mutual insurance company, opted to participate in the mechanism to elect a representative to serve on the Corporation's board of directors to protect its interests, and not simply to serve the organization.⁵

¶9 A local elected official owes a duty of undivided loyalty to the public whom the official serves while participating in decisions in an official capacity. The thrust of the Ethics Code is to help resolve conflicts between a government official's public responsibilities and the official's private interests in favor of fulfilling one's responsibilities to the public. In the circumstances about which you have asked, the official does not have a private interest. The official's responsibility is to faithfully represent the interests of the local governmental units that selected the official. There are no conflicting interests.

¶10 For these reasons, §19.59 does not bar a local elected official's simultaneously acting in an official capacity on decisions affecting an organization on whose board the official sits as a representative of the local unit of government. Because of our answer, we need not consider the other issues raised by your question.

Advice

¶11 The Ethics Board advises that in the case of a local official who has been elected to serve on the board of directors of the mutual insurance Corporation by a government approved process, to represent the local government's interests on the board, §19.59, *Wisconsin Statutes*, does not bar the official from participating in the local government's consideration, discussion, or votes to award a contract to or change government policy to permit the purchase of services from the corporation.

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⁵ The Ethics Board dealt with a similar issue in 2000 Wis Eth Bd 2. In that opinion, the facts were that members of the board of directors were chosen by the organization that created the insurance corporation. As we said: "The supervisor has not been chosen by the county and does not appear to be serving on the insurance company's board of directors as the county's representative." 2000 Wis Eth Bd 2, ¶10.